110TH CONGRESS
2D SESSION

S. 3183

To amend the Commodity Exchange Act to provide oil and gas price relief by requiring the Commodity Futures Trading Commission to take action to end excessive speculation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 24 (legislative day, JUNE 23), 2008

Mr. DORGAN (for himself, Mr. NELSON of Florida, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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A BILL

To amend the Commodity Exchange Act to provide oil and gas price relief by requiring the Commodity Futures Trading Commission to take action to end excessive speculation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''End Oil Speculation Act of 2008''.

SEC. 2. FINDINGS.

Congress finds that—

(1) skyrocketing energy prices in oil and gas are damaging families of the United States, as well as the economy, foreign policy, and national security of the United States;

(2) while there are a number of reasons for increasing energy costs, a large part of the problem appears to be from excessive speculation in petroleum in the futures markets;

(3) oil and gas prices result from the prices established in the petroleum futures markets;

(4) in the early 20th century, speculators were trading commodities to make money at the expense of farmers and families of the United States;

(5) Congress stopped that action by enacting the Commodities Exchange Act (7 U.S.C. 1 et seq.), which was reinforced later when Congress established the Commodity Futures Trading Commission (referred to in this section as the "Commission"), both of which were designed to ensure that the futures markets worked free of fraud, manipulation, and excessive speculation;

(6) the Commission accomplished this (directly or through delegated authority) primarily by promulgating rules and regulations that required the disclo-

sure of trading information and that limited speculative trading;

(7) Congress made it clear in the Commodities Exchange Act and in the establishment of the Commission that the petroleum futures markets exist for legitimate hedging of actual, physical commercial products that are bought and sold today, but are to be delivered in the future;

(8) for a long time after enactment and enforcement of that Act (including rules and regulations), the prices generated in the petroleum futures markets were based largely on fundamental factors relating to supply and demand for oil and gas in the United States and world markets;

(9) those prices no longer appear to be based on those factors, as excessive speculation appears to have, once again, hijacked the petroleum futures markets and sent oil and gas prices soaring;

(10) some experts have concluded that as much as 30 to 50 percent of the recent increase in the price of oil may be due to manipulation or excessive speculation in the petroleum futures markets;

(11) some experts have estimated that as much as 70 percent of the trading in the petroleum futures markets is by speculators rather than commer-

cial parties seeking to hedge the risk of the future delivery of an actual physical product and their counterparties;

(12) the excessive speculation appears to have resulted, in part, from a variety of actions by the Commission (including the issuance of exemptions, exclusions, and no action letters), technology changes, and threats by market participants to take their business outside the regulated United States markets to overseas unregulated markets in which the participants may not have to disclose their trading activities and will be subject to less regulation designed to protect markets and consumers;

(13) the petroleum futures markets must be restored to their original intent and purpose, which is legitimate hedge trading directly involving commercial parties and in which manipulation and excessive speculation are eliminated;

(14) the Commission is the primary regulator of the petroleum futures markets and has ample existing investigative and regulatory authority to end manipulation and excessive speculation and to do so quickly;

(15) Congress acknowledges that the Commission announced on May 29, 2008, that the Commis-

sion was conducting a broad and far-reaching investigation into the national and international crude markets (including into oil trading on regulated and unregulated exchanges, over the counter trading, cash trades, and storage, pipeline operations, shipping, and transportation generally) to determine if there was or is any improper manipulation or excessive speculation; and

(16) the announced investigation by the Commission is a good start, but it is only a start and much more needs to be done quickly.

SEC. 3. ELIMINATION OF MANIPULATION AND EXCESSIVE SPECULATION AS CAUSE OF HIGH OIL AND GAS PRICES.

Section 4a of the Commodity Exchange Act (7 U.S.C. 6a) is amended by adding at the end the following:

"(f) ELIMINATION OF MANIPULATION AND EXCESSIVE SPECULATION AS CAUSE OF HIGH OIL AND GAS PRICES.—

"(1) DUTY OF COMMISSION.—

"(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall use the authority provided under this Act to restore the petroleum futures markets to the original purpose and intent of the markets by eliminating manipulation and excessive speculation by investigation, regulation, and rulemaking.

"(B) CONSIDERATION OF FINDINGS.—In carrying out subparagraph (A), the Commission shall take into account each finding described in section 2 of the End Oil Speculation Act of 2008 (including paragraphs 2, 4 through 7, and 10 through 14 of section 2 of that Act).

"(2) LEGITIMATE HEDGE TRADING.—

"(A) IN GENERAL.—In carrying out this Act, the Commission shall distinguish between—

"(i) trading involving transactions by commercial producers and purchasers involving actual physical petroleum products for future delivery (referred to in this subsection as 'legitimate hedge trading'); and

"(ii) all other trading;

"(B) INCLUSION.—For purposes of this subsection, legitimate hedge trading shall include counterparties to a transaction by commercial producers and purchasers involving actual physical petroleum products for future delivery regardless of whether the counterparties are commercial producers or purchasers of the physical products.

"(3) TYPE OF TRADING.—Notwithstanding any other provision of this Act, the Commission shall modify (or delegate any appropriate entity to modify) such definitions, classifications, and data collection under this Act as is necessary to ensure that all direct and indirect parties and counterparties to all trades in the petroleum futures market are distinctly, clearly, and correctly identified for all purposes as engaging in—

"(A) legitimate hedge trading; or

"(B) any other type of trading.

"(4) ELIMINATION OF EXCESSIVE SPECULATION.—

"(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Commission shall review all regulations, rules, exemptions, exclusions, guidance, no action letters, orders, and other actions taken by or on behalf of the Commission (including any action or inaction taken pursuant to delegated authority by an exchange, self-regulatory organization, or any other entity) regarding all petroleum futures market participants or market activity (referred to in this subsection individually as a 'prior action') to ensure that only legitimate hedge trading occurs and that excessive speculation is eliminated.

"(B) PRIOR ACTION.—

"(i) IN GENERAL.—The Commission shall revoke or modify the application after the date of enactment of this subsection of any prior action taken by the Commission (including any prior action taken pursuant to delegated authority by any other entity) with respect to any trade on any market, exchange, foreign board of trade, swap or swap transaction, index or index market participant or trade, hedge fund, pension fund, and any other transaction, trade, trader, or petroleum futures market activity that is not a legitimate hedge trade.

"(ii) REVOCATION.—In carrying out this subparagraph, the Commission shall consider revoking the results of each prior action that, in whole or in part, has the direct or indirect affect of limiting, reducing, or eliminating—

“(I) the full applicability of position limits on any trading that is not legitimate hedge trading; or

“(II) the filing of any report or data regarding any direct or indirect trade or trader, including the filing of large trader reports.

“(C) DIFFERENT RULES OR REGULATIONS.—

“(i) IN GENERAL.—The Commission shall apply different rules and regulations to legitimate hedge trading and any other transactions, trades, traders, or petroleum futures market activity in a manner that accomplishes the purposes of this subsection.

“(ii) MARGIN REQUIREMENTS.—In carrying out this subparagraph, the Commission shall modify the purpose of margin requirements from credit protection only to include discouraging excessive speculation by setting margin requirements of at least 25 percent for any trading that is not legitimate hedge trading.

"(5) REGULATION.—Notwithstanding any other provision of law (including regulations), the Commission shall subject, to the maximum extent practicable, any person engaging, directly or indirectly, in a petroleum futures market trade, transaction, or other petroleum futures market activity in any location to regulation by the Commission unless and until the trade or transaction occurs in a market or exchange that has regulations that are substantially identical to the regulations of the Commission and that are fully and effectively enforced in each such market or on each such exchange.

"(6) DISCLOSURE TO COMMISSION.—Notwithstanding any other provision of law (including regulations), the Commission shall ensure, to the maximum extent practicable, that the activity of each participant in the petroleum futures markets, and all trades, trading, traders, and direct and indirect parties to the trades, trading, and traders, are fully, clearly, and accurately disclosed to the Commission so that the Commission and Congress can effectively regulate and monitor all such activity.

"(7) WORKING GROUP OF INTERNATIONAL REGULATORS.—The Commission shall convene a working group of international regulators to develop uniform international reporting and regulatory standards to ensure the protection of the petroleum futures markets from excessive speculation, manipulation, location shopping, and lowest common denominator regulation, which pose systemic risks to all petroleum futures markets, countries, and consumers.

"(8) REPORTS.—

"(A) IN GENERAL.—The Commission shall submit to Congress—

"(i) not later than 60 days after the date of enactment of this subsection, a report that describes in detail the actions the Commission has taken, is taking, and intends to take to carry out this subsection, including any recommended legislative changes that are necessary to carry out this subsection; and

"(ii) every 45 days thereafter, an update of the report required under clause (i).

"(B) ADDITIONAL EMPLOYEES OR RESOURCES.—Not later than 60 days after the date of enactment of this subsection, the Commission shall submit to Congress a report that describes the number of additional employees and resources that the Commission determines are necessary to carry out this subsection (including the specific duty of each additional employee).

"(9) EXPEDITED PROCEDURES.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Commission shall use emergency and expedited procedures to carry out this subsection.

"(B) REPORT.—If the Commission decides not to use the procedures described in subparagraph (A) in a specific instance, not later than 30 days after the date of the decision, the Commission shall submit to Congress a detailed report that describes in each instance the reasons for not using the procedures.".

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act take effect on June 24, 2008.

(b) APPLICATION.—Section 4a(f) of the Commodity Exchange Act (7 U.S.C. 6a(f)) (as amended by section 3) applies to any action taken by the Commodity Futures Trading Commission or any person or entity on or after June 24, 2008.

(c) IMPLEMENTATION.—The Commodity Futures Trading Commission shall implement section 4a(f) of the Commodity Exchange Act (7 U.S.C. 6a(f)) (as amended by section 3) not later than December 31, 2008.

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